
**Public Safety & Emergency Preparedness
Committee**

HB 1382

Brief Description: Expanding the DNA identification system.

Sponsors: Representatives Miloscia, Hurst, O'Brien and Kelley.

Brief Summary of Bill

- Expands the deoxyribonucleic acid (DNA) identification system to include information from all adults and juveniles lawfully arrested for any felony, gross misdemeanor, or patronizing a prostitute.
- Imposes penalty assessments that must be deposited into the DNA Database Account (Account).
- Expands the permissible uses for funds from the Account and provides for reimbursement of Account surpluses.

Hearing Date: 2/3/09

Staff: Lara Zarowsky (786-7123)

Background:

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

I. Offenders From Whom a Biological Sample Must be Collected

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Biological samples must be collected from any person convicted of a felony, sex and kidnapping offenders required to register on or after June 2008, and any person convicted of the following misdemeanors and gross misdemeanors:

- assault in the fourth degree with sexual motivation;
- communicating with a minor for immoral purposes;
- custodial sexual misconduct in the second degree;
- failure to register;
- harassment;
- patronizing a prostitute;
- sexual misconduct with a minor in the second degree; and
- violation of a sexual assault protection order.

If a DNA sample already exists from the offender in question, another biological sample does not have to be collected.

II. Testing Biological Samples

The Forensic Laboratory Services Bureau of the WSP is responsible for testing biological samples for inclusion in the DNA database. The Director of the Forensic Laboratory Services Bureau (Director) must give priority to testing samples from persons convicted of sex and violent offenses. Duplicate biological samples may be excluded from testing, unless the Director deems testing necessary or advisable.

III. Funding

A court must levy a \$100 fee upon sentencing for any crime included in the database, regardless of when the crime was committed. The fee constitutes a legal financial obligation that must be paid after all other legal financial obligations included in the sentence have been satisfied. Eighty percent of this fee is deposited in the state DNA Database Account (Account) and 20 percent is transmitted to the agency responsible for collection of a biological sample from the offender.

Summary of Bill:

I. Offenders For Whom a Biological Sample Must be Collected

The DNA identification system is expanded to include DNA information taken from all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony, gross misdemeanor, or patronizing a prostitute.

Beginning January 1, 2010, local law enforcement agencies must start collecting biological samples from arrested persons. The samples must be forwarded to the WSP for analysis. This requirement does not apply if the state does not reimburse the local law enforcement agencies for the sample collection costs.

II. How the Samples May be Used

The WSP must analyze biological samples it receives from local governments unless a profile for the person in question is already in the system. The biological sample must be retained through

the disposition of the underlying criminal case that caused the sample to be taken. The WSP may only place a searchable DNA profile in the DNA identification system after the person has been charged with a crime.

The WSP must retain the biological sample and the DNA profile if the person is convicted. However, the WSP must destroy the biological sample and delete the DNA profile if:

- the person is not charged within the applicable charging period;
- the accused has been found not guilty or has been acquitted of any offense that would require a biological sample to be collected; and
- the underlying conviction has been reversed and the case dismissed.

A person who prevails in a court action for misuse or unauthorized retention of a biological sample or DNA profile shall be awarded all costs, including reasonable attorney fees. In addition, the court must award a minimum of \$1,000 or \$10 for each day of the violation, whichever is greater.

The WSP may send a searchable DNA profile to the Federal Bureau of Investigations for a one-time keyboard search, but may only be entered in the combined DNA index system after the accused has been found guilty and all right to appeal has lapsed, been waived, or been exhausted.

III. Funding

Persons found to have been convicted of a traffic infraction other than a parking offense must pay an assessment equal to 5 percent of the fine associated with the infraction. The assessment may not be reduced or waived under any circumstances. Revenue from this assessment must be deposited in the Account.

In addition to any other penalty or fine imposed by law, any person found guilty of a crime in superior court must pay an assessment equal to 10 percent of the penalty or fine imposed for the conviction. Revenue from the assessment must be deposited in the Account.

The uses of the DNA database are expanded to include:

- biological sample analysis;
- biological sample collection costs, including reimbursement to local law enforcement;
- costs related to identifying and destroying biological samples;
- costs related to developing and implementing a system that can identify whether persons have a pre-existing sample in the DNA database; and
- costs related to testing crime scene DNA evidence.

Reimbursing local law enforcement for biological sample collection costs must be given priority. Beginning in 2015, the Chief of the WSP is authorized to proportionately redistribute Account surpluses back to the local governments that contributed to the Account. The local governments may only use the surplus funds for forensic DNA-related programs.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.